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13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**
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19 In re: THE BILLING RESOURCE d/b/a
20 INTEGRETTEL, a California
21 Corporation,
22
23 Debtor.
24
25 Tax ID: 33-0289863
26
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Case No. 07-052890

Chapter 11

19 THE BILLING RESOURCE, d/b/a
20 INTEGRETTEL, a California corporation,
21
22 Plaintiff,
23
24 v.
25
26 FEDERAL TRADE COMMISSION, et al.
27
28 Defendants.

Adv. Proc. No. 07-05156

**DECLARATION OF
COLLOT GUERARD
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY
INJUNCTION**

DECLARATION OF COLLOT GUERARD
IN OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION

1 I, Collot Guerard, pursuant to 28 U.S.C. § 1746, declare as follows:

- 2 1. I am an attorney employed by the Federal Trade Commission ("FTC" or "Commission")
3 in its Bureau of Consumer Protection, Division of Marketing Practices. My work address
4 is: Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-288,
5 Washington, DC 20580. Unless otherwise stated, I have personal knowledge of the facts
6 stated in this Declaration, and if called as a witness, could competently testify thereto.
7
- 8 2. I submit this Declaration in response to the Motion for a Preliminary Injunction recently
9 filed by The Billing Resource d/b/a Integretel ("Integretel") in the above-captioned
10 adversary proceeding.
11
- 12 3. I am an attorney representing the Commission in a civil action captioned *Federal Trade*
13 *Commission v. Nationwide Connections, Inc., et al.*, No. 06-Civ-80180-Ryskamp-Vitunac
14 (the "Enforcement Action"), currently pending in the United States District Court for the
15 Southern District of Florida. Integretel is a defendant in the Enforcement Action.
16
- 17 4. The FTC expects to file a motion for summary judgment against all defendants in the
18 Enforcement Action. Motions for summary judgment are due November 6, Oppositions
19 must be filed by December 4, and Replies by December 18, 2007.
- 20 5. Integretel's estimate of its projected litigation costs, as set forth in the Neal Goldfarb
21 declaration dated September 24, 2007, if the Enforcement Action is not preliminarily
22 enjoined, appears to be unreasonably high because Integretel's estimate assumes that
23 there will be a lengthy trial. In fact, the FTC believes it is likely to win summary
24 judgment that the defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by
25 cramming more than \$30 million in unauthorized collect call charges onto consumers'
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1 telephone bills between 2003 and the end of 2005. The FTC expects to win on liability
2 because it is undisputed that most, if not all, of the collect calls were never made or
3 accepted.
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5 6. The FTC also expects to win on the amount of monetary relief against the defendants for
6 consumer injury, which is the amount consumers paid to the telephone companies less
7 any refunds or credits the consumers received. With respect to Integretel, the
8 approximate dollar amount of injury associated with the collect calls billed by Integretel
9 is undisputed. Integretel estimates that the net amount consumers paid associated with
10 the Integretel- Network One charges is \$425,493 and the net amount consumers paid
11 associated with the Integretel-Access One charges is \$4,408,186, for a total consumer
12 injury amount of \$4,833,679. *See* Integretel Response to FTC Interrogatory No. 11,
13 dated June 26, 2007, annexed hereto as **Guerard Attachment A**.
14

15 7. Integretel's estimate of its projected litigation costs also fails to address the costs of
16 defending itself from the monetary claims that the FTC would assert in the bankruptcy
17 court, regardless of whether the Court were to enjoin the FTC from prosecuting the
18 Enforcement Action in the Florida District Court as to Integretel. Although the same
19 facts and legal arguments that would be made in the Enforcement Action would be made
20 by the FTC before this Court, Integretel's costs of defending itself in the bankruptcy
21 proceeding are likely to be as high or higher than the costs of defending itself in the
22 Enforcement Action, for the following reasons.
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24 a. In the bankruptcy proceeding, Integretel will have to defend against both the
25 FTC's proof of claim, and a separate nondischargeability action. Because the
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1 entire body of evidence against Integretel and its codefendants is so strong, the
2 Commission may assert that its monetary claim against Integretel related to the
3 phone bill cramming scheme at issue in the Enforcement Action constitutes a
4 nondischargeable debt for money obtained by false pretenses, a false
5 representation, or actual fraud.
6

7 b. The Florida District Court is already familiar with the parties, the legal issues, the
8 basic facts, and some of the evidence through the numerous discovery and other
9 motions on which it has had to rule. By contrast there will be significant costs
10 incurred by Integretel (and the FTC) in enlightening this Court with respect to a
11 case that already has more than 640 docket entries.
12

13 c. Moreover, on information and belief, it is the FTC's understanding that Integretel
14 and the other Billing Aggregator defendant in the Enforcement Action have been
15 sharing costs, such as the costs of deposition transcripts. If Integretel has to
16 defend against the FTC's monetary claims in the Bankruptcy Court, it will no
17 longer be able to turn to the other Billing Aggregator defendant to help subsidize
18 the costs of litigation.
19

20 8. Integretel's generalized estimate of the litigation costs associated with the non-bankruptcy
21 case appears to be based on the declaration of Neal Goldfarb dated September 24, 2007,
22 submitted in support of Integretel's Emergency Motion for Temporary Restraining Order
23 and Preliminary Injunction. Some of Mr. Goldfarb's observations are misplaced. First, it
24 is not at all clear that any more depositions will be taken because discovery has closed
25 and the Florida Court has not ruled on the motion of the other Billing Aggregator to take
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1 an additional ten depositions or on the motion by Integretel to continue one deposition.
2 The FTC has opposed both motions. Second, it is unlikely that there will be any more
3 motions regarding the depositions, especially if the Court denies the motion to take
4 additional depositions. Third, Mr. Goldfarb's analysis ignores the significant number of
5 admissions that the defendants in the Enforcement Action, including Integretel, have
6 made. This will make any trial abbreviated, in the unlikely event that the FTC loses a
7 summary judgment motion. Fourth, Integretel estimates the trial may last as long as four
8 weeks. This is highly unlikely. In submitting their Joint Scheduling Report, the FTC and
9 two of the individual defendants estimated the trial would only last up to nine days.
10 Counsel for the Billing Aggregator defendants, including Mr. Goldfarb, estimated the
11 trial to last 10 to 15 days. There was never an estimate of four weeks.

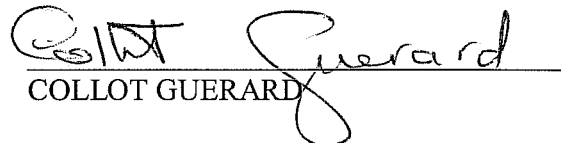
12 9. In addition to the law enforcement actions brought against Integretel clients by the FTC
13 and/or States that are listed in the Declaration of Laura Kim dated October 1, 2007, filed
14 by the FTC in opposition to Integretel's Motion for a Temporary Restraining Order and
15 Preliminary Injunction [See Kim Decl. ¶¶ 19-21, 23-25], two of Integretel's largest
16 creditors have also been targets of law enforcement proceedings:

- 17 a. Another Integretel client by the name of **Email Discount Network**, which is
18 listed in this Court's docket [DE 3] as Integretel's second largest unsecured
19 creditor and is now a member of the Creditors' Committee, was prosecuted by the
20 Florida Attorney General for a fraudulent cramming scheme. Attached hereto as
21 **Guerard Attachment B** are true and accurate copies of the complaint and
22 stipulated order in that action;

1 b. Several years after being sued by the FTC, Integretel client **Telco Billing, Inc.**, an
2 affiliate of YP.Com (formerly known as YP.Net), was prosecuted by California
3 and 33 other state attorneys general for deceptively marketing Internet yellow
4 pages advertising services through mass mailings of "activation checks" that
5 businesses and non-profits unwittingly deposited. Victims were then billed on
6 their phone bills for the allegedly unauthorized charges. Telco Billing is listed as
7 one of Integretel's largest creditors, and is also on the Creditors' Committee.
8 Attached hereto as **Guerard Attachments C-E** are copies of a related press
9 release, stipulated facts, and settlement order issued by the California Attorney
10 General.
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15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on October 15, 2007
17 in Washington, DC

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COLLOT GUERARD